Supreme Court, U.S.
FILED
FEB 25 2000

(6)

No. 99-898

In the Supreme Court of the United States

CITY OF CHICAGO, ET AL., PETITIONERS

v.

DONNA E. SHALALA, SECRETARY OF HEALTH AND HUMAN SERVICES, ET AL.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

BRIEF FOR THE RESPONDENTS IN OPPOSITION

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2099

QUESTION PRESENTED

Whether Sections 402 and 403 of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, 8 U.S.C. 1612 and 1613 (Supp. IV 1998), which restrict the eligibility of aliens for federal public assistance programs, contravene the equal protection component of the Due Process Clause of the Fifth Amendment.

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OPINIONS BELOW

The opinion of the court of appeals (Pet. App. 1a-21a) is reported at 189 F.3d 598. The order of the district court (Pet. App. 22a-47a) is unreported.

JURISDICTION

The judgment of the court of appeals was entered on August 31, 1999. The petition for a writ of certiorari was filed on November 26, 1999. This Court's jurisdiction is invoked under 28 U.S.C. 1254(1).

STATEMENT

1. This case presents an equal-protection challenge to Sections 402 and 403 of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996

(PRWORA or Act), Pub. L. No. 104-193, 110 Stat. 2262-2265, 8 U.S.C. 1612, 1613 (Supp. IV 1998). The provisions at issue restrict the eligibility of aliens for federal public assistance programs, including the Supplemental Security Income (SSI) program, 42 U.S.C. 1381 *et seq.*; the food stamp program, 7 U.S.C. 2011 *et seq.*; the Temporary Assistance to Needy Families (TANF) program, 42 U.S.C. 601 *et seq.*; and Medicaid, 42 U.S.C. 1396 *et seq.*[1]

These restrictions are intended to implement Congress's "national policy with respect to welfare and immigration," stated in the text of the Act, especially the policy of "[s]elf-sufficiency," which has been "a basic principle of United States immigration law since this country's earliest immigration statutes." 8 U.S.C. 1601(1) (Supp. IV 1998). Congress further stated that

> [i]t continues to be the immigration policy of the United States that—
>
> (A) aliens within the Nation's borders not depend on public resources to meet their needs, but rather rely on their own capabilities and the resources of their families, their sponsors, and private organizations, and

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[1] The Act sets forth several exceptions to that general exclusion. In particular, it makes clear that aliens are not made ineligible for numerous programs, such as the national school lunch program (see 42 U.S.C. 1751 *et seq.*), assistance under the Child Nutrition Act (see 42 U.S.C. 1771 *et seq.*), and federally funded immunization programs. See 8 U.S.C. 1613(c)(2) (Supp. IV 1998). See also pp. 4-5, *infra* (noting programs for which some classes of aliens remain eligible).

> (B) the availability of public benefits not constitute an incentive for immigration to the United States.

8 U.S.C. 1601(2) (Supp. IV 1998).

"Despite the principle of self-sufficiency," Congress concluded, "aliens have been applying for and receiving public benefits from Federal, State, and local governments at increasing rates," and "[c]urrent eligibility rules for public assistance and unenforceable financial support agreements have proved wholly incapable of assuring that individual aliens not burden the public benefits system." 8 U.S.C. 1601(3) and (4) (Supp. IV 1998). Congress therefore found that there are "compelling government interest[s]" in "enact[ing] new rules for eligibility and sponsorship agreements in order to assure that aliens be self-reliant in accordance with national immigration policy," and in "remov[ing] the incentive for illegal immigration provided by the availability of public benefits." 8 U.S.C. 1601(5) and (6) (Supp. IV 1998).

In accordance with these policy statements, the Act restricts the eligibility of aliens for specified federal benefit programs. Under Section 401 of the Act, any alien who is not a "qualified alien" is generally ineligible for "any Federal public benefit." 8 U.S.C. 1611(a) (Supp. IV 1998).[2] Section 402(a) of the Act provides that a "qualified alien" is generally ineligible for "any

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[2] The Act defines "qualified alien" to refer principally to aliens who are lawful permanent resident aliens, and also certain aliens who have been granted forms of relief such as asylum, withholding of deportation, and parole based on urgent humanitarian needs. See 8 U.S.C. 1641(b) (Supp. IV 1998). The restrictions on the receipt of federal benefits by aliens who are not "qualified aliens" are not at issue here. See Pet. App. 3a n.3.

specified Federal program," which term encompasses the SSI and federal food stamp programs. 8 U.S.C. 1612(a)(1) and (3) (Supp. IV 1998). Section 403(a) of the Act provides that a qualified alien who enters the United States on or after August 22, 1996, generally "is not eligible for any Federal means-tested public benefit for a period of 5 years beginning on the date of the alien's entry into the United States with a status within the meaning of the term 'qualified alien.'" 8 U.S.C. 1613(a) (Supp. IV 1998). "Federal means-tested public benefits" include TANF and Medicaid. See 62 Fed. Reg. 45,257 (1997).[3]

Although the Act renders many aliens ineligible for federal assistance programs, Congress has also legislated several exceptions to that general rule. Benefits remain available to a qualified alien "lawfully admitted to the United States for permanent residence" who "has worked" or "can be credited" with "40 qualifying quarters of coverage as defined under title II of the Social Security Act." 8 U.S.C. 1612(a)(2)(B) and (b)(2)(B) (Supp. IV 1998). Benefits also remain available to a qualified alien who is a veteran with an honorable discharge who fulfills the minimum active duty-service requirements, an active-duty service member, or the spouse or the unmarried dependent child of such a veteran or active-duty service member. 8 U.S.C. 1612(a)(2)(C) and (b)(2)(C), 1613(b)(2) (Supp. IV 1998). Disabled and blind qualified aliens lawfully residing in the United States on August 22, 1996, and qualified

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[3] Apart from the five-year restriction covering qualified aliens who entered the United States on or after August 22, 1996, the States are "authorized to determine the eligibility" of qualified aliens "for any designated Federal program[s]," including TANF and Medicaid. 8 U.S.C. 1612(b)(1) and (3) (Supp. IV 1998).

aliens lawfully residing in the United States who were receiving SSI benefits on August 22, 1996, remain eligible for SSI benefits. 8 U.S.C. 1612(a)(2)(E) and (F) (Supp. IV 1998).[4] Congress has also enacted legislation making the following qualified aliens eligible for food stamps, effective November 1, 1998: (1) disabled and blind aliens lawfully residing in the United States on August 22, 1996; (2) aliens who, on August 22, 1996, were lawfully residing in the United States and were at least 65 years old; and (3) children currently under 18 years old who were lawfully residing in the United States on August 22, 1996. 8 U.S.C. 1612(a)(2)(F), (I) and (J) (Supp. IV 1998).

2. Petitioners filed suit in district court, alleging that the Act's restrictions on the eligibility of lawful permanent resident aliens for federal benefits violate constitutional principles of equal protection. The district court dismissed the complaints. Pet. App. 22a-47a. Following this Court's decision in *Mathews* v. *Diaz*, 426 U.S. 67, 80 (1976), the district court upheld the restrictions on the ground that they are rationally related to legitimate governmental interests. See Pet. App. 44a-46a.

3. The court of appeals affirmed. Pet. App. 1a-21a. Like the district court, the court of appeals determined that the constitutionality of the challenged restrictions should be examined under the rational-basis standard set forth in *Diaz*. *Id.* at 8a-12a. The court rejected petitioners' reliance on *Graham* v. *Richardson*, 403 U.S. 365 (1971), which held that a state statute denying welfare benefits to a class of resident aliens should be

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[4] Nonqualified aliens who were receiving SSI on August 22, 1996, also remain eligible for SSI. 8 U.S.C. 1611(b)(5) (Supp. IV 1998).

subjected to heightened scrutiny. The court of appeals noted that this Court in *Graham* "devoted several paragraphs of its opinion to distinguishing between state authority to make alienage-based classifications and federal authority to do so," Pet. App. 8a, and that *Diaz* also distinguished *Graham* "and explained that state and federal alienage classifications must be treated differently because of Congress' plenary authority to regulate the conditions of entry and residence of aliens," *id.* at 9a. That difference in the applicable standard of review, the court continued (*id.* at 10a), was not called into question by *Adarand Constructors, Inc.* v. *Peña*, 515 U.S. 200 (1995), which held that state and federal racial classifications are both subject to strict scrutiny. The court observed (Pet. App. 10a) that "*Adarand* itself acknowledged an exception to [the] general rule" requiring the same level of scrutiny for state and federal classifications "for cases in which special deference to the political branches of the federal government is appropriate," and also that *Adarand* cited (see 515 U.S. at 217-218) for that proposition *Hampton* v. *Mow Sun Wong*, 426 U.S. 88 (1976), a case involving federal exercise of the immigration power.

The court then upheld the challenged restrictions under the rational basis standard. Pet. App. 13a-21a. The court observed that the Act's restrictions on alien eligibility for federal public benefits are rationally related to several legitimate governmental purposes: encouraging aliens to rely on their own resources and those of their families, sponsors and private organizations, rather than the public fisc (*id.* at 15a); removing a possible incentive to immigrate in order to obtain welfare benefits (*id.* at 16a); reducing the escalating cost of funding federal benefits programs (*id.* at 16a-

17a); and encouraging noncitizens to naturalize (*id.* at 17a-18a).[5] The court acknowledged that the Act's restrictions might be overinclusive with respect to some of those legitimate interests (*id.* at 16a, 17a-18a), but, it emphasized, "rational basis scrutiny does not require a perfect fit between [the] legitimate governmental purpose and the means chosen to achieve it." *Id.* at 18a. The court also found no merit to petitioners' suggestion that the Act's restrictions were motivated by animus toward noncitizens. *Id.* at 18a-19a.

The court noted that the Act "contains a number of exceptions to its general exclusion of aliens from the welfare programs," but, it continued, those exceptions do not detract from "the rationality of the overall statutory scheme." Pet. App. 19a. Several of the exceptions "extend benefits to aliens who have made special contributions to this Country," *ibid.*, and other exceptions "ensure benefits to individuals who have sought refuge in this Country because of especially difficult conditions in their own countries," *id.* at 20a. "No doubt," the court remarked, "there is some question whether Congress included within the excepted class all those who should have been included. Drawing such lines, however, is a legislative task for Congress." *Ibid.*

ARGUMENT

The court of appeals correctly concluded that the PRWORA's restrictions on the eligibility of aliens for federal public benefits comport with constitutional principles of equal protection. That decision also does

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[5] The court of appeals observed (Pet. App. 17a) that the policy of encouraging aliens to naturalize is not expressly set forth in Congress's statement of policies in the PRWORA, but it nonetheless accepted that policy as legitimate and found it rationally related to the Act's restrictions on alien eligibility for benefits.

not conflict with any decision of this Court or any other court of appeals. Further review is therefore not warranted.

1. The PRWORA's restrictions on the eligibility of certain classes of aliens for federal assistance represent a permissible exercise of Congress's constitutional authority over aliens. This Court has emphasized that Congress has broad power to draw distinctions on the basis of alienage. See, *e.g.*, *Mathews* v. *Diaz*, 426 U.S. 67, 78-80, 85 (1976). "For reasons long recognized as valid, the responsibility for regulating the relationship between the United States and our alien visitors has been committed to the political branches of the Federal Government." *Id.* at 81. "Since decisions in these matters may implicate our relations with foreign powers, and since a wide variety of classifications must be defined in the light of changing political and economic circumstances, such decisions are frequently of a character more appropriate to either the Legislature or the Executive than to the Judiciary." *Ibid.* Thus, the Court will uphold congressional classifications affecting aliens as long as they are not "wholly irrational." *Id.* at 83.

As the court of appeals recognized (Pet. App. 9a), *Diaz* is of particular relevance to this case. In *Diaz*, the Court rejected an equal-protection challenge to federal legislation that required aliens to be lawfully admitted for permanent residence and to reside in the United States for at least five years to qualify for certain Medicare benefits. 426 U.S. at 69-70. The Court sustained that restriction in light of Congress's broad power to regulate in the fields of immigration and naturalization. See *id.* at 78-84. The Court emphasized that "Congress has no constitutional duty to provide *all aliens* with the welfare benefits provided to citizens[.]" *Id.* at 82. And

the Court made clear that it is for Congress to determine which subgroups of aliens should receive "a share in the bounty that a conscientious sovereign makes available to its own citizens[.]" *Id.* at 80.

The Court assumed in *Diaz* that "the five-year line drawn by Congress [was] longer than necessary to protect the fiscal integrity of the [Medicare] program," and that "unnecessary hardship is incurred by persons just short of qualifying." 426 U.S. at 83. The Court stressed, however, that "[t]he task of classifying persons for medical benefits, like the task of drawing lines for federal tax purposes, inevitably requires that some persons who have an almost equally strong claim to favored treatment be placed on different sides of the line," and "the differences between the eligible and the ineligible are differences in degree rather than differences in the character of their respective claims." *Id.* at 83-84. "When this kind of policy choice must be made," the Court stated, "we are especially reluctant to question the exercise of congressional judgment." *Id.* at 84. Because neither of the requirements imposed by Congress was "wholly irrational," *id.* at 83, the Court sustained the legislation.

The court of appeals in this case therefore properly relied on *Diaz* when it applied the rational-basis standard to examine petitioners' equal-protection claim. Pet. App. 8a-12a. And, as the court properly determined (*id.* at 13a-18a), the challenged provisions of the Act are consistent with equal-protection principles, because they further several legitimate governmental interests: encouraging aliens to rely on their own resources and those of their families, sponsors and private organizations; reducing the costs of federal welfare programs; providing an incentive for aliens to become citizens; and removing a possible incentive to

immigrate to the United States in order to obtain welfare benefits. The court of appeals therefore correctly upheld the challenged restrictions under a straightforward application of *Diaz*.

2. Petitioners argue, however, that *Diaz* does not enunciate the proper standard for review of the challenged provisions of the Act. They maintain that the Act's restrictions should be subjected to heightened scrutiny, as this Court subjected a state restriction on aliens' eligibility for welfare benefits to heightened scrutiny in *Graham* v. *Richardson*, 403 U.S. 365 (1971). Petitioners contend that decisions after *Diaz*, notably *Adarand Constructors, Inc.* v. *Peña*, 515 U.S. 200 (1995), require the courts to apply the same standard of review to state and federal classifications of aliens, at least outside the context of admission and exclusion (Pet. 10-11); that the highly deferential standard articulated and applied in *Diaz* properly governs only congressional decisions concerning the admission and exclusion of aliens (Pet. 12); and that *Diaz* should be limited to its facts, as a case upholding a restriction to ensure the fiscal integrity of the Medicare program (Pet. 13-15). Those arguments are without merit.

a. As an initial matter, the Court in *Graham* clearly limited its holding to *state* legislation. See 403 U.S. at 376 (holding that "a state statute that denies welfare benefits to resident aliens" is unconstitutional); Pet. App. 8a. Indeed, one of the rationales in *Graham* for invalidating the state laws at issue was the *federal* government's exclusive authority over the regulation of immigration and naturalization. 403 U.S. at 377-380. As the Court explained, the state laws "conflict[ed] with the[] overriding national policies in an area constitutionally entrusted to the Federal Government." *Id.* at 378. That conflict rendered the state statutes

unconstitutional: "Since such laws encroach upon exclusive federal power, they are constitutionally impermissible." *Id.* at 380.

Further, in *Diaz*, which was decided after *Graham*, the Court made clear that federal legislation regulating benefits received by aliens after they have arrived in the United States is not subject to strict scrutiny. See 426 U.S. at 81-83. In so holding, the Court expressly distinguished *Graham*, explaining that the equal protection analysis in cases like *Graham* "involves singificantly different considerations because it concerns the relationship between aliens and the States rather than between aliens and the Federal Government." *Id.* at 84-85. The Court explained that, while there is little basis for a State to distinguish between persons who are citizens of another State from those who are citizens of another country, "a comparable classification by the Federal Government is a routine and normally legitimate part of its business." *Id.* at 85. See also *Plyler* v. *Doe*, 457 U.S. 202 (1982).

The Court's decision in *Adarand* did not change the standard of review applicable to federal legislation governing aliens. Petitioners argue that, under *Adarand*, the test for determining whether a statutory classification deprives a person of equal protection must be the same whether the classification is based in state or federal legislation. But *Adarand* did not involve immigration matters, nor did it involve classifications drawn between citizens and aliens or among classes of aliens. Moreover, in *Adarand*, the Court specifically recognized the "special deference" due to the political branches in cases involving federal authority over immigration matters, 515 U.S. at 217-218, and acknowledged an exception to the rule requiring the same standard of review for state and federal legislation

where such special deference is appropriate, *id.* at 218; see Pet. App. 10a. Nothing in *Adarand* suggests that the Court was overruling its prior holding in *Diaz*.[6]

b. Nor has this Court suggested that the deferential standard applied in *Diaz* to federal legislation is limited to decisions concerning the initial admission and exclusion of aliens. To the contrary, the Court has stressed that "[t]he National Government has broad constitutional powers in determining what aliens shall be admitted to the United States, the period they may re-

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[6] Nor, contrary to the suggestion of petitioners (Pet. 11), does *Saenz* v. *Roe*, 526 U.S. 489 (1999), require a different result. In *Saenz*, the Court stated that "Congress may not authorize the States to violate the Fourteenth Amendment." *Id.* at 507. In enacting restrictions on aliens' eligibility for federal benefits (even those administered by the States), Congress does not authorize the States to violate the Amendment; rather, Congress exercises its own constitutionally assigned responsibility governing the conduct of aliens in the United States. A deferential level of scrutiny is appropriate to congressional classifications affecting aliens because the text and structure of the Constitution place primary responsibility for regulating the conduct of aliens in the United States in Congress. Petitioners point out (Pet. 11) that the Court in *Graham* also stated that "Congress does not have the power to authorize the individual States to violate the Equal Protection Clause." 403 U.S. at 382. *Graham* did not hold, however, that Congress would not have had the authority to enact or authorize the state welfare restriction challenged in that case; it held, rather, that in light of what it regarded at the time as the serious constitutional questions that would be presented by such a holding, the Court would not construe the applicable federal statute to authorize those restrictions. See *ibid.* In this case, it is undisputed that the pertinent federal statutes do restrict the eligibility of aliens for public assistance benefits. The Court's decision in *Diaz*, which followed *Graham*, made clear that the standards governing judicial scrutiny of federal legislation affecting aliens are more deferential than those controlling judicial review of state legislation.

main, *regulation of their conduct before naturalization*, and the terms and conditions of their naturalization." *Graham*, 403 U.S. at 377 (emphasis added and internal quotation marks omitted). Congress's restrictions on aliens' eligibility for federal public benefits are properly viewed as a regulation of aliens' conduct in the United States. Congress declared that the national policy of immigration favors self-sufficiency on the part of aliens, which is obviously an aspect of the aliens' conduct while in the United States. See 8 U.S.C. 1601(1) (Supp. IV 1998). The restrictions may also be viewed as encouraging naturalization and discouraging immigration for the purpose of obtaining public benefits, see Pet. App. 17a, both of which are interests directly implicated in federal regulation of immigration and naturalization.[7]

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[7] Petitioners rely (Pet. 7, 12, 15) on *De Canas* v. *Bica*, 424 U.S. 351, 355 (1976), but that reliance is misplaced. In *De Canas*, the Court held that a state law that prohibited employers from knowingly employing illegal aliens "if such employment would have an adverse effect on lawful resident workers" was not prohibited state regulation of immigration, and was not preempted by federal law. *Id.* at 352-365. As the Court explained, although the "[p]ower to regulate immigration is unquestionably exclusively a federal power," that does not mean that "every state enactment which in any way deals with aliens is a regulation of immigration and thus *per se* pre-empted by this constitutional power[.]" *Id.* at 354-355. Because the challenged state law was consistent with federal immigration law, the Court stated, "absent congressional action," it was not "an invalid state incursion on federal power." *Id.* at 356. Thus, *De Canas* stands only for the proposition that courts will not automatically strike down every state statute that adversely affects some group of aliens, if there is no conflict between the state and federal law. *De Canas* does not suggest that the federal government's extensive power over aliens is limited to the power to make decisions about who should be permitted to immigrate.

c. Petitioners acknowledge that, in *Diaz*, this Court "relied on federal immigration powers to uphold legislation affecting no one's immigration status," but they attempt to distinguish *Diaz* on the ground that it involved a durational residence requirement for obtaining benefits under Medicare, which is an insurance program. Pet. 8. Petitioners argue that "[i]t is only appropriate—and actuarially sound—to require noncitizens to reside in this country and contribute to the program for some substantial period before they may receive the benefits of this insurance fund." *Ibid.* On that basis, petitioners claim that "*Diaz* should not be understood to rest on the federal immigration power, but rather on the long-settled rule that certain benefits can be denied to noncitizens when there is a 'special public interest' that demands that such benefits not be made available to citizens and noncitizens on an equal footing." *Ibid.*

Petitioners misread *Diaz*. The central issue in *Diaz* was not what type of benefit program was at issue, but whether Congress's broad power over immigration matters was implicated. See *Diaz*, 426 U.S. at 81-83. Moreover, petitioners' argument is at odds with the repeated references in *Diaz* to "welfare benefits" generally, as opposed to insurance programs in particular. See *id.* at 80, 81 n.20, 82, 84-85. The Court also emphasized Congress's power to distinguish between citizens and aliens (*id.* at 78-81), and noted that the deference owed to Congress's decisions on immigration matters "dictate[s] a narrow standard of review." *Id.* at 82. That principle of deference "has become about as firmly embedded in the legislative and judicial tissues of our body politic as any aspect of our government." *Fiallo* v. *Bell*, 430 U.S. 787, 792-793 n.4 (1977).

3. The decision below is consistent with the only decision of another court of appeals that has addressed the restrictions in the PRWORA on alien eligibility for federal public assistance benefits. See *Rodriguez* v. *United States*, 169 F.3d 1342, 1350 (11th Cir. 1999).[8] In *Rodriguez*, the court applied rational-basis review, relying squarely on *Diaz* (*id.* at 1346-1350), and also upheld the Act under that standard of review (*id.* at 1350-1352). The court also rejected the contention that the PRWORA reflects animus toward aliens (*id.* at 1352-1353). That decision is consistent with the decision of the court of appeals in this case. Further review is therefore not warranted.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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FEBRUARY 2000

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[8] Most district courts that have considered the issue have also upheld the restrictions on alien eligibility in the Act, as petitioners acknowledge (Pet. 16). A district court recently invalidated the Act insofar as it denies Medicaid coverage for prenatal medical care to otherwise eligible pregnant aliens, but it did so on the ground that the Act supposedly distinguishes among United States citizens (the children of the pregnant aliens) based on the alienage or citizenship status of their mothers. See *Lewis* v. *Grinker*, No. CV-79-1740 (CPS) (E.D.N.Y. Jan. 25, 2000), slip op. 71-85.